



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 6797-00
20 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CAP [REDACTED], USMC, [REDACTED];
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 13 Sep 00 w/attachments
(2) BCNR file for Subject's prior case (1228-00)
(3) HQMC MMOA-4 memo dtd 6 Nov 00
(4) HQMC MMPR memo dtd 25 Oct 00

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of captain he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2000 Captain Selection Board, vice the FY 2001 Captain Selection Board.
2. The Board, consisting of Messrs. Frankfurt and Pfeiffer and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 16 November 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (2) reflects that in Petitioner's prior case before this Board, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing his fitness report for 14 June to 12 September 1996; and this Board removed his failure by the FY 2000 Captain Selection Board. He did not apply for correction of his record until 15 November 1999, but his application stated that he did not discover the injustice until 20 May 1999.

c. In correspondence attached as enclosure (3), the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner's request has merit and warrants favorable action.

d. In correspondence attached as enclosure (4), the HQMC Promotion Branch (MMPR) recommended denial on the grounds that Petitioner did not demonstrate reasonable diligence to ensure his record was substantially complete and accurate before his promotion board met. They stated that he would have received the date of rank and effective date of 1 September 1999, had he been promoted pursuant to selection by the FY 2000 Captain Selection Board. His current captain date of rank and effective date is 1 August 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief.

The Board concurs with the MMOA-4 advisory opinion at enclosure (3) in finding that Petitioner's request has merit and warrants favorable action. In light of the information provided by MMPR at enclosure (4), they find the date to which his date of rank and effective date should be adjusted is 1 September 1999. Contrary to the MMPR opinion, they find his not having acted sooner to pursue correcting his fitness report record is an insufficient basis to deny his otherwise meritorious request, particularly considering the date he says he discovered the injustice in his case.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

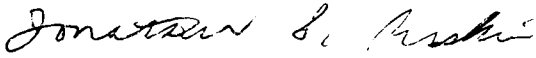
a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of captain as 1 September 1999, rather than 1 August 2000; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6797-00
IN REPLY REFER TO:
1600
MMOA-4
6 Nov 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of Captain
[REDACTED] USMC of 18 Oct 00

1. Recommend approval of Captain [REDACTED] request for backdating his date of rank (DOR).

2. Per the reference, we reviewed Captain [REDACTED] record and petition. He failed selection on the FY00 USMC Captain Selection Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board for removal of the Change of Reporting Senior fitness report of 960614 to 960912 and was selected for promotion. Captain [REDACTED] requests backdating his DOR.

3. In our opinion, the petitioned fitness report did present jeopardy to the record and its removal enhanced the competitiveness of the record. We believe Captain [REDACTED] should be afforded the benefit of the doubt and have his DOR backdated.

4. Point of contact [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division

679700



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

1412/2
IN REPLY REFER TO:
MMPR
25 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Route Sheet of 18 Oct 00

1. Reference (a) requested an advisory opinion in the case of Captain [REDACTED]. Captain [REDACTED] is requesting a back date of rank to the date he would have been promoted if selected from the FY00 USMC Captain Promotion Selection Board.

2. The following facts are germane to this case:

a. Captain [REDACTED] considered and not selected as an in zone officer by the FY00 USMC Captain Promotion Selection Board, which convened 990302.

b. Captain [REDACTED] petitioned to have his fitness report 960614 to 960912 and his failure of selection removed from his record on 991105. The fitness report was removed by the Performance Evaluation Review Board on 000217. The failure of selection was removed by BCNR on 000225.

c. Captain [REDACTED] was subsequently considered and selected as an in zone officer by the FY01 USMC Captain Promotion Selection Board. He was promoted to captain on 000801.

d. The subject fitness report was over three years old when the FY00 board convened. Captain [REDACTED] made no attempt to correct the error in his record prior to the board convening. In fact, he did not attempt to correct the report until he had failed of selection. Based on this, we believe Captain [REDACTED] did not demonstrate reasonable diligence to ensure his record was substantially complete and accurate prior to the date board convened.

3. Promotion Branch recommends disapproving Captain [REDACTED] request for a back date of rank. If approved, his date of rank would be 990901.

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] SMC

4. The point of contact in this matter is Capt [REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
Head, Officer Promotion Section